

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY**

INSTRUCTIONS---READ CAREFULLY

1. **Use This Form** – If you are a person currently serving or will serve a sentence entered by a state court and you are asking for relief from the conviction or the sentence.

Do Not Use This Form –

*IF YOU ARE CHALLENGING YOUR FEDERAL CONVICTION OR SENTENCE. INSTEAD, USE THE FORM ENTITLED “MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY.”

*IF YOU ARE A PRETRIAL DETAINEE CHALLENGING YOUR PRE-CONVICTION CUSTODY, A FEDERAL PRISONER CHALLENGING THE EXECUTION OF YOUR SENTENCE OR AN ACTION TAKEN BY THE BUREAU OF PRISONS, OR IN OTHER SITUATIONS WHERE RELIEF IS NOT AVAILABLE UNDER 28 U.S.C. § 2254 OR 28 U.S.C. § 2255. INSTEAD, USE THE FORM ENTITLED “PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 BY A PERSON IN CUSTODY.”

2. **Readable** – You may either type or neatly handwrite the information on the following form. It must be readable.
3. **Signed Under Penalty of Perjury** – To submit your petition, it must be signed. Your signature indicates that the petition is signed "under penalty of perjury." This means that any false statement of a material fact presented in your petition may serve as a basis for prosecution and conviction for perjury. Your signature does **not** have to be witnessed by a notary public. The petition may also be signed by a person authorized to sign it for you, such as an attorney.
4. **Copies and Proper Court** – When the petition is fully completed, you must mail the **original and at least two (2) copies** to: Clerk of Court, United States District Court for the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Milwaukee, WI 53202.
5. **All Grounds** – You must include all grounds for relief in this petition and the facts supporting each ground for relief. If you fail to do so, you may be prevented from presenting additional grounds at a later date.
6. **Legal Citations and Arguments** – You must answer all applicable questions. However, you should not cite to legal authorities (i.e., case law or statutes) **on this form**. If you submit a supporting memorandum in addition to this form, it must not exceed fifteen (15) pages. Excess pages will not be considered.
7. **Fee** – You must either (a) pay the filing fee of \$5.00 or (b) if you do not have the \$5.00, you may request permission to proceed *in forma pauperis* (as a poor person), in which event you must complete and sign the petition and affidavit attached to this petition and have an authorized officer at the penal institution complete and sign the attached certificate. You must also have an authorized officer attach a printout of your prison trust account statement activity for the six months prior to the filing of your petition.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

_____, Petitioner,
Full Name *(under which you were convicted)*

Prisoner Number

Place of Confinement

vs.

_____, Respondent.
Authorized Person Having Custody of Petitioner

Docket No. _____
(to be supplied by Clerk)

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY**

Caution: THIS IS NOT THE FORM TO BE USED IF YOU ARE CHALLENGING A FEDERAL CONVICTION OR SENTENCE OR IF YOU ARE A PRETRIAL DETAINEE CHALLENGING YOUR PRECONVICTION CUSTODY, A FEDERAL PRISONER CHALLENGING THE EXECUTION OF YOUR SENTENCE, OR AN ACTION TAKEN BY THE BUREAU OF PRISONS.

I. SUBJECT OF THIS PETITION

A. Name and location of the state court that entered the judgment of conviction which you are challenging

B. Criminal docket or case number _____

C. Date of the judgment of conviction _____

D. Date of sentencing _____

E. Length of sentence _____

F. In this case, were you convicted on more than one count or of more than one crime?

☐ Yes ☐ No

G. Identify all crimes of which you were convicted and sentenced in this case

H. What was your plea? (*Check one*)

☐ Not guilty ☐ Guilty ☐ Insanity plea ☐ Nolo contendere (*no contest*)

If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

I. If you went to trial, what kind of trial did you have? (*Check one*)

☐ Jury ☐ Judge only

SUBJECT OF THIS PETITION - continued

J. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☐ No

If yes, state the type(s) of hearing or proceeding

II. DIRECT STATE APPEAL OF CONVICTION

A. Did you appeal from the judgment of conviction?

☐ Yes ☐ No

If yes, attach the decision(s) that resolved your appeal and answer the following questions:

1. Date of filing appeal _____

2. Grounds raised _____

3. Result _____

4. Date _____

B. Did you seek further review by the highest state court?

☐ Yes ☐ No

If yes, attach the decision(s) that resolved your petition for review and answer the following questions:

1. Date of filing of petition for review _____

2. Grounds raised _____

3. Result _____

4. Date _____

DIRECT STATE APPEAL OF CONVICTION - continued

C. Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes ☐ No

If yes, attach the decision(s) that resolved your petition for certiorari and answer the following questions:

1. Date of filing petition for certiorari _____

2. Grounds raised _____

3. Result _____

4. Date _____

III. STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL

A. Other than the appeals listed above in Section II, have you previously filed any other state petitions, applications, or motions concerning **this** state judgment of conviction?

☐ Yes ☐ No

If yes, attach the decision(s) that resolved your application for state post-conviction relief and answer the following questions:

1. Name of court _____

2. Docket or case number _____

3. Date of filing _____

4. Type of petition, application, or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

7. Result _____

STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL- continued

8. Date _____

9. Did you appeal to the highest state court having jurisdiction over the action taken on your first state petition, application, or motion?

☐ Yes

☐ No

B. If you filed a second petition, application, or motion, attach the decision and answer the following questions:

1. Name of court _____

2. Docket or case number _____

3. Date of filing _____

4. Type of petition, application, or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes

☐ No

7. Result _____

8. Date _____

9. Did you appeal to the highest state court having jurisdiction over the action taken on your second state petition, application, or motion?

☐ Yes

☐ No

C. If you filed a third petition, application, or motion, attach the decision and answer the following questions:

1. Name of court _____

2. Docket or case number _____

3. Date of filing _____

STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL- *continued*

4. Type of petition, application or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes

☐ No

7. Result _____

8. Date _____

9. Did you appeal to the highest state court having jurisdiction over the action taken on your third state petition, application, or motion?

☐ Yes

☐ No

IV. GROUNDS FOR RELIEF

For this petition, state **every** ground supporting your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (*use up*) your available state-court remedies on each ground on which you request action by the federal court.

Ground One _____

Supporting **FACTS** (*Briefly summarize the facts without citing cases or law.*)

GROUND FOR RELIEF - continued

If you did not exhaust your state remedies on Ground One, explain why.

Ground Two

Supporting **FACTS** *(Briefly summarize the facts without citing cases or law.)*

[illegible]

GROUND **S FOR RELIEF** - *continued*

Ground Four _____

Supporting FACTS *(Briefly summarize the facts without citing cases or law.)*

If you did not exhaust your state remedies on Ground Four, explain why.

PRIOR FEDERAL CHALLENGES

- A. Have you previously filed any type of petition, application, or motion in a federal court regarding the state conviction that you are challenging in this petition?

☐ Yes ☐ No

If yes, attach the decision(s) that resolved your prior federal court challenge and answer the following questions:

1. Name of court

PRIOR FEDERAL CHALLENGES - continued

2. Docket or case number _____

3. Date of filing _____

4. Type of petition, application, or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes

☐ No

7. Result _____

8. Date _____

9. Did you appeal the action taken on your first federal petition, application, or motion to a federal court of appeals?

☐ Yes

☐ No

If yes, attach the decision(s) that resolved your appeal and answer the following questions:

a. Name of court _____

b. Docket or case number _____

c. Date of filing _____

d. Type of petition, application, or motion filed _____

e. Grounds raised _____

PRIOR FEDERAL CHALLENGES - continued

f. Result _____

g. Date _____

B. Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes ☐ No

If yes, attach the decision(s) that resolved your petition for certiorari and answer the following questions:

1. Date of filing petition for certiorari _____

2. Grounds raised _____

3. Result _____

4. Date _____

V. REPRESENTATION

A. Give the name and address of each attorney who represented you in the following:

1. At preliminary hearing _____

2. At arraignment and plea hearing _____

3. At trial _____

4. At sentencing _____

5. On direct appeal _____

VI. REPRESENTATION - continued

6. In any state post-conviction proceeding _____

7. On appeal from any ruling against you in a state post-conviction proceeding _____

VII. REQUEST FOR RELIEF

State exactly what you want the court to do for you.

VIII. DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, hereby declare under penalty of perjury that the foregoing information is true and correct.

Signed this _____ day of _____, 20 _____.

Signature of Petitioner

(Signature of lawyer, if any)

If you are signing the petition and are not the petitioner, state your relationship to the petitioner and explain why the petitioner is not signing this petition.

IX. CERTIFICATE OF INMATE MAILING - *Optional*

If you deposit your petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in your prison/institutional/jail mailing system and attach first-class postage pre-paid, and complete and sign this statement, you will establish the filing date as the date of deposit in that mailing system.

I, the undersigned, hereby declare under penalty of perjury that I placed this petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the prison/institutional/jail mailing system with prepaid, first-class postage on _____.
(month, day, year)

Signed this _____ day of _____, 20_____.

Signature of Petitioner

Instructions for Completing the Petition and Affidavit to Proceed Without Prepayment of Fees and/or Costs – Read Carefully

1. Purpose of Form - This form may be used to establish indigency for the purpose of (1) obtaining a waiver of the applicable filing fee for your action; (2) establishing financial eligibility for the appointment of counsel; or (3) waiving of other fees, such as fees for transcripts or subpoenas.

2. Signed Under Penalty Of Perjury - To submit your petition and affidavit, it must be signed. Your signature indicates that the Petition and Affidavit is signed "under penalty of perjury." This means that any false statement of a material fact presented in your petition may serve as a basis for prosecution and conviction for perjury. Your signature does **not** have to be witnessed by a notary public.

3. If You Are A Non-Prisoner Bringing a Civil Action, You Are Advised - The filing fee for a civil action (other than a petition for habeas corpus relief pursuant to 28 U.S.C. § 2241, § 2254 or a motion pursuant to 28 U.S.C. § 2255) is \$250.00. If you are bringing a petition for habeas corpus relief pursuant to 28 U.S.C. § 2241, § 2254 or a motion pursuant to 28 U.S.C. § 2255, refer to number five of these instructions. If you have the money to pay the filing fee, you should send a cashier's check or money order for \$250.00, payable to the clerk of court with your complaint.

If you do not have enough money to pay the full filing fee at the time your action is filed, you may petition the court to proceed without prepayment of fees and costs by using the attached form. Upon receipt of your complaint and petition, the court will screen the complaint. The court shall dismiss your complaint if (1) your allegation of poverty is untrue - i.e., if your petition and affidavit to proceed without prepayment of fees contains false information; (2) the action is frivolous or malicious; (3) your complaint does not state a claim on which relief can be granted; or (4) you sue a defendant for money damages and that defendant is immune from such relief. 28 U.S.C. § 1915(e).

If your petition is granted, you will proceed *in forma pauperis* (IFP). This means that the \$250.00 filing fee will be waived.

If your petition is denied because you are financially ineligible to proceed IFP, you will be required to pay the full \$250.00 filing fee. Your suit will not proceed unless the fee is paid in full.

4. If You Are a Prisoner Who Is Bringing a Civil Rights or Other Civil Action, You Are Advised -

In accordance with the provisions of the Prison Litigation Reform Act (PLRA), prisoners are obligated to pay the full filing fee of \$250.00 for a civil action. 28 U.S.C. § 1915(b)(1). If multiple prisoners are bringing a single action, one filing fee is required per prisoner.

If you have the money to pay the filing fee, you should send a cashier's check or money order for \$250.00, payable to the clerk of court with your complaint.

If you do not have enough money to pay the full filing fee at the time your action is filed, you may petition the court to proceed without prepayment of fees and costs by using the attached form. If your petition is granted, you will pay the \$250.00 filing fee in installments, beginning with an initial partial filing fee. The initial partial filing fee will be calculated from a certified copy of your prison trust account statement that shows transactions for the last six months. **The trust account statement must be filed in support of your petition.**

Instructions - continued

(Statements are required for any prison or jail trust accounts you have had over the prior six months). Failure to do so may result in the petition being denied. The initial partial filing fee will be 20 percent of:

- (1) the average monthly deposits to your account for the immediately preceding six-month period,
or
- (2) the average monthly balance in your account for that same six-month period, whichever amount is greater.

You will be required to pay the initial partial filing fee out of your account if funds exist. 28 U.S.C. § 1915(b)(1)(A) & (B).

After the initial filing fee is paid, monthly installments equal to 20 percent of your preceding month's income will be withdrawn from your account and forwarded to the court. However, if the amount in your account is less than \$10.00, no installment will be withdrawn. Withdrawals will routinely occur until the full \$250.00 filing fee is paid. 28 U.S.C. § 1915(b)(2).

Regardless of whether some or all of the filing fee has been paid, the court is required to screen your complaint. The court shall dismiss the complaint if (1) your allegation of poverty is untrue - i.e., if your petition and affidavit to proceed without prepayment of fees contains false information; (2) the action is frivolous or malicious; (3) your complaint does not state a claim on which relief can be granted; or (4) you sue a defendant for money damages and that defendant is immune from such relief. 28 U.S.C. § 1915(e); 28 U.S.C. § 1915A.

With respect to claims based on prison conditions, no action may be brought under 42 U.S.C. § 1983 or any other federal law by a prisoner confined in a correctional institution until the available administrative remedies are exhausted. 42 U.S.C. § 1997e.

Note: If, while you are a prisoner, you file three or more actions which are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, then you will be prohibited from bringing any other actions IFP unless you are in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

5. If You Are a Prisoner or Pretrial Detainee Who Is Filing a Petition Pursuant to 28 U.S.C. § 2241 § 2254 or a Motion Pursuant to § 2255, You Are Advised - The filing fee for a § 2241 or § 2254 petition is \$5.00. If you have the money to pay the filing fee, you should send a cashier's check or money order for \$5.00, payable to the clerk of court with your complaint. There is no filing fee for a motion to vacate, set aside, or correct sentence pursuant to § 2255.

Note: Regardless of whether you are filing a petition pursuant to § 2241, § 2254, or a motion pursuant to § 2255, you must have an authorized officer attach a printout of your prison trust account activity statement for the six months prior to the filing of your petition.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

In the Case of

v.

Docket No. _____
(To be Supplied by Clerk)

**PETITION AND AFFIDAVIT TO PROCEED
WITHOUT PREPAYMENT OF FEES AND/OR COSTS**

I, _____, declare that I am the
(print your full name)

☐ Petitioner ☐ Plaintiff ☐ Movant ☐ Other _____

in the above-entitled action. In support of my request to proceed *in forma pauperis*, I declare that I am unable to pay the fees and/or costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this petition, I answer the following questions truthfully and under penalty of perjury:
(Additional pages may be added, if necessary, to provide complete information.)

Personal Information

1) Are you employed? ☐ Yes ☐ No

2) Are you currently incarcerated? ☐ Yes ☐ No

If yes, state the place of your incarceration and provide your prisoner identification number:

(place)

(number)

Personal Information - continued

In addition, if you are a prisoner, you must have an authorized officer attach a printout of your prison trust account statement showing transactions for the six-month period immediately preceding the filing of your complaint, motion, or petition and showing the balance of your release account. You must also complete the attached "Authorization for Release of Institutional Account Information and Payment of the Filing Fee."

- 3) Are you currently married? ☐ Yes ☐ No
If yes, is your spouse employed? ☐ Yes ☐ No
- 4) Do you have any legal dependents (children/adults) whom you are responsible for supporting?
☐ Yes ☐ No

If yes, list them below:

<u>First and Last Initials (For Minor Children Only) or Name</u>	<u>Relationship To You</u>	<u>Age</u>	<u>Amount of Support Provided Per Month</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

Property – If you are married, your answers must ***include your spouse's property***.

- 1) Do you own a car? ☐ Yes ☐ No

If yes, list car(s) below:

<u>Model and Make</u>	<u>Year</u>	<u>Approximate Current Value</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

- 2) Do you own your residence(s)? ☐ Yes ☐ No

If yes, state the approximate value(s). \$ _____

- 3) Do you own any other valuable tangible property, including but not limited to, jewelry, artwork, or antiques?
☐ Yes ☐ No

Property - continued

If yes, identify the property and its approximate value(s).

Property	Approximate Value
_____	\$ _____
_____	\$ _____
_____	\$ _____

- 4) Do you have any cash or checking, savings, or other similar accounts? ☐ Yes ☐ No

If yes, state the total amount of such sums. \$ _____

- 5) Do you own any intangible property, including but not limited to stocks, bonds, trusts, or individual retirement accounts (e.g., IRA, 401k)?

☐ Yes ☐ No

If yes, state the nature of that property and the approximate value(s).

Income – If you are married, your answers **must include your spouse's income**.

(When calculating income, you must include any salary, child support, public assistance, unemployment compensation, disability payments, life insurance payments, pensions, annuities, workers' compensation, stock dividends and interest, gifts, and inheritance, or other incoming monies.)

State your total monthly income? \$ _____

State your spouse's total monthly income? \$ _____

Expenses – If you are married and/or have dependents, **your expenses should also include your household's expenses**.

(When calculating household expenses, you may include groceries, clothing, medical costs, utilities which are not included in your rental payments, transportation, and insurance).

- 1) Identify the following amounts that you pay per month:

☐ Rent or ☐ Mortgage \$ _____

Car payment(s) \$ _____

Expenses - continued

Alimony and/or court-ordered
child support \$ _____

Credit card payment(s) \$ _____

2) Do you have any other monthly expenses that you have not already identified?

☐ Yes ☐ No

If yes, list them below:

<u>Expense</u>	<u>Amount</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

3) What is the total amount of your monthly expenses? \$ _____

Other Circumstances – *Describe any other financial circumstance(s) that you would like the court to consider when reviewing this petition.*

Date

Signature – Signed Under Penalty of Perjury

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

In the Case of

v.

Docket No. _____
(To be Supplied by Clerk)

AUTHORIZATION FOR RELEASE OF INSTITUTIONAL ACCOUNT INFORMATION AND
PAYMENT OF THE FILING FEE

Instructions

Use this Authorization:

If you are a prisoner filing a civil rights or other civil action, complete this authorization.

Do not use this Authorization:

1. If you are not a prisoner
2. If you are a prisoner or are "in custody" and are petitioning the court for a writ of habeas corpus under § 2254 or § 2241
3. If you are a prisoner filing a motion to vacate, set aside, or correct your sentence under § 2255.

* * * * *

I, _____
(Name of Plaintiff)

(Prison I.D. Number)

I authorize the clerk of court to obtain from the agency having custody of my person, information about my prison trust account, including balances, deposits, and withdrawals until the filing fee is paid. I understand that, when sufficient funds exist in my prison trust account, I will be required to pay an initial partial filing fee equal to 20 percent of the greater of: (A) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or notice of appeal, or (B) the average monthly balance in my account for the six-month period immediately preceding the filing of the complaint or notice of appeal. I understand and hereby authorize that, after payment of the initial partial filing fee, monthly payments will be forwarded to the clerk of court equal to 20 percent of the preceding month's income credited to my account. I hereby authorize the agency or facility having custody of my person to withdraw funds from my prison trust account and forward such payments from my account to the clerk of court each time the amount in the account exceeds \$10.00, until the filing fee is paid as set forth in 28 U.S.C. § 1915(b)(2).

(Signature of Plaintiff)

(Date)

NOTE: A CERTIFIED COPY OF YOUR PRISON TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF YOUR COMPLAINT MUST ACCOMPANY THIS PETITION AND AFFIDAVIT. (Statements are required for any prison or jail trust accounts you have had over the prior six months.)